

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CASE #: 07 CV 6300 (PKC)

NATHEL & NATHEL, INC.,

Plaintiff,

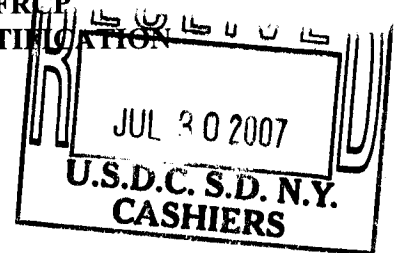
- against -

SEIMOK LEE d/b/a LEE 77,

Defendants.

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**CORRECTED FRCP
RULE 7.1 CERTIFICATION**



Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure and to enable Judges and Magistrate Judges of the court to evaluate possible disqualification or recusal, the undersigned counsel of record for plaintiff, Nathel & Nathel, Inc., certifies that the following are corporate parents, subsidiaries, or affiliates of that party which are publicly held:

NONE

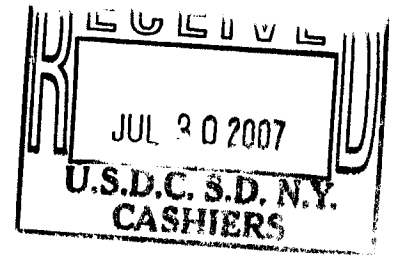
DATED: July 24, 2007

Respectfully submitted,

by: _____

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Assigned to: Judge P.K. Castel

CORRECTED COMPLAINT

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Plaintiff, Nathel & Nathel, Inc., ("Nathel" or "plaintiff"), by its attorney Andrew Squire, Esq., as and for its complaint against defendants, pursuant to FRCP Rule 15(a), alleges as follows:

Jurisdiction and Venue

1. Jurisdiction is based on Section 5(c)(5) of the Perishable Agricultural Commodities Act, 7 U.S.C. §499e(c)(5), 28 U.S.C. § 1331 and 28 U.S.C. §1332.
2. Venue is this District based on 28 U.S.C. § 1391 in the (a) plaintiff's claim arose in this District and (b) plaintiff transacts and conducts business is in this District.

Nature of Action

3. This is an action brought by "Nathel" to recover monies due and owing by Seimok Lee d/b/a Lee 77 ("Lee" or "defendant") pursuant to the Perishable Agricultural Commodities Act of 1930, as amended ("PACA"), and pursuant to an agreement for the sale by Nathel to Lee of wholesale quantities of perishable agricultural commodities, including but not limited to produce, fruit and vegetables ("Produce"), pursuant to Nathel's Standard Sales Terms set forth on the face of each invoice. Lee has failed and refused to remit the unpaid balance in the principal sum of \$122,540.75 ("Principal Sum") due and owing to Nathel, despite due demand thereof.

The Parties

4. Plaintiff, a corporation, duly organized and existing under the laws of the State of New York, which maintains its principal place of business at 357 Row C, New York City Terminal Market, Bronx, New York, 10407, is engaged in the business of selling Produce in interstate commerce and is a licensed dealer under PACA.
5. Defendant, which upon information and belief, is a sole proprietor having had an address for the conduct and transaction of business at New York City Terminal Market a/k/a Hunts Point Market, 235a Row B, Bronx, NY 10474, is and was at all times pertinent herein a dealer and commission merchant and subject to and licensed under the trust provisions of the PACA as a dealer and commission merchant.
6. This action is brought to enforce the trust provisions of P.L. 98-273, the 1984 amendment to Section 5 of the PACA, 7 U.S.C. § 499e(c).
7. Between on or about January 12, 2007, and on or about March 9, 2007, at defendant's special instance and request, plaintiff sold and delivered Produce to defendant in interstate commerce, for the Principal Sum which, to date, remains unpaid.
8. Lee received and accepted the said Produce from Nathel without objection and resold the said Produce in his ordinary course of business.
9. At the time of Lee's receipt and acceptance of said the Produce, Nathel became a beneficiary in a statutory trust designated to assure payment to Produce suppliers. The trust consists of all Produce or Produce-related assets, including all funds co-mingled with funds from other sources and all assets procured by such funds, in the possession or control of defendants since the creation of the trust.
10. Nathel preserved its interest in the PACA trust for the amount of Principal Sum and remains a beneficiary until full payment of the Principal Sum is made for the said Produce.

11. Defendant has not disputed the Principal Sum in any way and has repeatedly promised to pay, but to date have not done so.

Count 1
(Failure by Lee to Pay From PACA Trust Funds)

12. Nathel incorporates each and every allegation set forth in paragraphs 1 to 11 above as if fully set forth herein.
13. The failure by Lee to make payment of the Principal Sum to Nathel from the statutory trust is a violation of the PACA trust and PACA regulations, and is unlawful.

WHEREFORE, Nathel requests an order enforcing payment by Lee of the Principal Sum from the trust by requiring immediate payment of the Principal Sum by Lee.

Count 2
(Failure by Lee to Pay for Goods Sold and Delivered)

14. Nathel incorporates each and every allegation set forth in paragraphs 1 to 13 above as if fully set forth herein.
15. Defendant Lee failed and refused to pay Nathel the Principal Sum owed to Nathel for Produce sold and delivered to defendants by Nathel.

WHEREFORE, Nathel requests judgment in the Principal Sum against Lee.

Count 3
(Account Stated)

16. Nathel incorporates each and every allegation set forth in paragraphs 1 to 15 above as if fully set forth herein.
17. On or about May 14, 2007, Nathel furnished defendant with a customer statement of account for the Principal Sum, which account stated had been received and accepted by defendant without protest or objection.

18. By reason of the foregoing an account was stated between the parties for the Principal Sum which sum defendants failed and refused to pay to Nathel despite repeated demands for payment.

WHEREFORE, Nathel requests judgment in the amount of the Principal Sum against Lee.

Count 4
(Breach of Contract)

19. Nathel incorporates each and every allegation set forth in paragraphs 1 to 18 above as if fully set forth herein.
20. By reason of defendant's breach of contract and/or contracts heretofore made with, Nathel has been damaged in the principal sum.

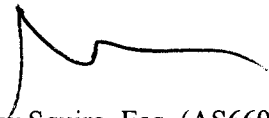
WHEREFORE, Nathel requests judgment in the amount of the Principal Sum against Lee.

Count 5
(Interest, Late Fees and Attorney's Fees)

21. Nathel incorporates each and every allegation set forth in paragraphs 1 to 20 above as if fully set forth herein.
22. As a result of defendant's failure to make full payment of the Principal Sum, Nathel has lost the use of said funds.
23. In addition, pursuant to parties' agreement memorialized in Nathel's Standard Sales Terms set forth on each of the said written invoices heretofore provided by plaintiff to defendant, defendant is liable to Nathel for reasonable legal fees and the costs of recovery in the sum of no less than \$3,500.00 plus the Principal Sum 122,540.75 for a total due and owing in the amount of \$125,540.75.
24. As a further result of defendant's failure to make full payment promptly of the principal sum, Nathel has been required to pay attorney's fees, late fees and collection costs in order to bring this action to require defendants to comply with its contractual and statutory duties.

WHEREFORE, Nathel requests judgment against defendant Seimok Lee for the sum total of \$126,040.75, together with pre-judgment interest, costs and disbursements of this action.

DATED: Brooklyn, NY
July 24, 2007



Andrew Squire, Esq. (AS6696)
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CORRECTED COMPLAINT

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